

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

SECOND APPEAL No.93 of 2015

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DATE: 20.03.2015

Between:

M/s.GPR Township and another

...Appellants

and

Mohd. Raheem Baig

...Respondent

COUNSEL FOR THE APPELLANTS : SRI P.NARAHARI BABU

COUNSEL FOR THE RESPONDENT: ---

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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ORDER:

This Second Appeal arises out of judgment and decree dated 18.07.2014 in A.S.No.97 of 2008 on the file of V Additional District Judge (FTC), Ranga Reddy at L.B.Nagar, whereby he has confirmed the judgment and decree dated 22.10.2007 in O.S.No.519 of 2004 on the file of the learned Principal Senior Civil Judge, Ranga Reddy District.

I have heard Sri P.Narahari Babu, learned counsel for the appellants and perused the record.

The facts in brief leading to the filing of this Second Appeal are that in pursuance of paper advertisement issued and distribution of brochures offering to sell house plots, in the name and style of Vinayak Residency Private Limited, SGR Township, the respondent approached the appellants for purchase of plot No.1 admeasuring 430 sq.yards in Survey Nos.288, 292 and 294 situated at

Ragannaguda Village, Turkayamjal, Hayatnagar Mandal. The respondent/plaintiff specifically pleaded that for sale of the said plot, the appellants have accepted part payments towards the sale consideration of Rs.3,20,000/-. The appellants have accepted part payments, namely, a sum of Rs.60,000/- on 07.05.2002 under receipt No.1/12, a sum of Rs.60,000/- on 23.01.2003 under receipt No.1/45 and further sum of Rs.50,000/- on 26.05.2003 under receipt No.1/71. That the appellants have issued pass book and made entries upon receipt of the said amount. Thus, the respondent has pleaded that the total amount paid by him towards part sale consideration is Rs.1,70,000/-. That when the respondent has also offered to pay the fourth instalment, the appellants could not receive the same and that on 16.02.2004, the respondent demanded the appellants to receive the balance sale consideration and register the sale deed. That because, the appellants have demanded additional amount of Rs.2,00,000/- for registration of the plot, the respondent has caused legal notice dated 04.03.2004 on the appellants calling upon them to receive the sale consideration of Rs.1,50,000/- and execute registered sale deed. The appellants have managed the postal officials and got the legal notice returned with an endorsement 'the addressee is absent for seven days'. The respondent has therefore filed the above mentioned suit for specific performance of agreement.

The appellants have filed a written statement wherein they have admitted the issuance of paper advertisement and the respondent visiting their office and enrolling as a member to purchase an open plot. They have pleaded that in pursuance of the membership, the respondent was assured to accommodate suitable open plot after conclusion of the agreement and the respondent has tentatively joined as a member. That the token advance amount of Rs.40,000/- was also paid and balance payment of Rs.60,000/- on 23.01.2003 and Rs.50,000/- on 26.05.2003 was admitted. They have further pleaded that in respect of the land in Survey Nos.285, 288, 291, 292 and 294, they have entered into agreement of sale with the owner and layout was tentatively approved and the land was converted into small plots and that as they could not derive full-fledged title from their vendors in respect of some of the plots, which include plot No.1 admeasuring 430 sq.yards, they have not become absolute owners with regard to the said property. The appellants have further pleaded that after receipt of Rs.1,70,000/-, they have informed the respondent that if the latter fulfills the terms and conditions within five

months from the date of his enrollment, registered sale deed would be executed in his favour and that as the respondent failed to comply with the terms and conditions within the said period, the appellants have not recommended to their vendors to execute the registered sale deed in favour of the respondent with regard to the suit property.

On the respective pleadings of the parties, the trial Court framed the following issues for consideration.

1. Whether there is no valid contract between the plaintiff and the defendants?
2. Whether the plaintiff failed to pay the balance of sale consideration within the stipulated time?
3. Whether the plaintiff was ready and willing to perform his part of the contract at all material points of time?
4. Whether the defendants are ready and willing to perform their part of the contract?
5. Whether the plaintiff is entitled to the relief of specific performance?
6. To what relief?

On behalf of the respondent/plaintiff, he examined himself as P.W.1 and got marked Exs.A.1 to A.10. On behalf of the appellants, appellant No.2 was examined as D.W.1. On appreciation of oral and documentary evidence, the trial Court has decreed the suit by answering all the issues in favour of the respondent/plaintiff. As noted above, the lower appellate Court has confirmed the said judgment and decree.

At the hearing, learned counsel appearing for the appellants advanced two contentions, namely, 1) that there was no valid agreement of sale entered between the parties in writing and therefore, the suit for declaration of title was not maintainable and 2) that plot No.1 has already been sold by the appellants and therefore, the decree for specific performance is not capable of being complied with.

As regards the first submission of the learned counsel, a perusal of the judgments of both the Courts below shows that detailed reasons have been

assigned to reject the said plea. The appellants have categorically admitted that in pursuance of the advertisement issued by them offering to sell the plots, the respondent has approached them and paid the part sale consideration of Rs.1,70,000/-. Even though a formal agreement was not entered by the parties, the appellants have passed on receipts towards part of sale consideration besides making entries of receipt of such payments in the pass book. Thus, without doubt, it can be held that there was an agreement between the parties, under which, the appellants offered to sell a plot to the respondent on receipt of the total sale consideration of Rs.3,20,000/-. Therefore, both the Courts below have rightly held issue No.1 in favour of the respondent.

As regards the second submission of the learned counsel, the appellants have not pleaded in the written statement that the plot was already sold. On the contrary, they have pleaded that in respect of some of the plots, full-fledged ownership rights have not been conferred by their vendors and that plot No.1 was one such plot. Therefore, the submission advanced by the learned counsel for the appellants, namely, that plot No.1 was sold by the appellants, was not pleaded by the appellants before both the Courts below.

In the light of the above discussion, I am of the opinion that this second appeal does not raise any substantial question of law warranting interference with the concurrent judgments of the Courts below.

Accordingly, this Second Appeal is dismissed.

As a sequel to dismissal of main appeal, SA.MP.No.265 of 2015 filed by the appellants for interim relief is disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

20th MARCH, 2015.

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